

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII

901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

03 MAY -5 AM 11:25

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF:

Vessel Systems, Inc.
430 East 7th Street
Dubuque, IA 52001

**CONSENT AGREEMENT AND
FINAL ORDER**

RCRA# IAR000500561

Respondent.

Docket No. RCRA-07-2002-0099

Proceeding under Section 3008 (a) and (g) of
the Resource Conservation and Recovery Act
as amended, 42 U.S.C. § 6928(a) and (g).

I. PRELIMINARY STATEMENT

This proceeding was initiated on or about March 27, 2002, when the United States Environmental Protection Agency, Region VII ("Complainant" or "EPA") issued a Complaint, Compliance Order and Notice of Opportunity for Hearing ("Complaint") to Vessel Systems, Inc. pursuant to Sections 3008(a) and (g) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and the Hazardous and Solid Waste Amendments of 1984 (hereinafter known as RCRA), Title 42 United States Code (U.S.C.), Section 6901 *et seq.* The Complainant sought civil penalties for alleged violations of 42 U.S.C. § 6925 and 40 Code of Federal Regulations (C.F.R.), Parts 261 and 262.

The Complainant and Respondent subsequently entered into negotiations in an attempt to settle the allegations contained in the Complaint. This Consent Agreement and Final Order (CAFO) is the result of such negotiations and resolves all issues relating to the administrative claims arising from the allegations in the Complaint.

II. CONSENT AGREEMENT

1. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms of the Final Order. The terms of this Consent Agreement and the Final Order shall not be modified except by a subsequent written agreement between the parties.
2. Respondent admits the jurisdictional allegations of the Complaint and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order set forth below.
3. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in the Complaint.
4. Respondent waives its right to further contest the factual allegations and legal conclusions set forth in the Complaint in this or subsequent proceedings to enforce the terms of this Consent Agreement and Final Order, and agrees not to appeal the Final Order set forth below.
5. Respondent explicitly waives its right to a hearing on any issue of fact or law set forth in EPA's Complaint.
6. Respondent and EPA each agree to bear their own costs and attorneys' fees.
7. Respondent agrees that, in settlement of the claims alleged in the Complaint, Respondent shall pay a mitigated ability to pay civil penalty of \$500 as set forth in Paragraph 1 of the Final Order.
8. This Consent Agreement and Final Order shall be effective upon entry of the Final Order by the Regional Judicial Officer for EPA Region VII. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.
9. This Consent Agreement and the Final Order shall remain in full force and effect until Complainant's representative designated in Paragraph 9 of the Final Order provides Respondent with written notice, in accordance with Paragraph 11 of the Final Order, that all requirements hereunder have been satisfied.
10. Failure to pay any portion of the civil penalty on the date the same is due may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the rate of six percent (6%) per annum.

11. Each signatory of this Consent Agreement and Final Order certifies he or she is fully authorized to enter into the terms of the Consent Agreement and Final Order.

III. FINAL ORDER

Pursuant to the authority of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and according to the terms of the Consent Agreement set forth above, IT IS HEREBY ORDERED THAT:

A. Payment of Civil Penalty

1. Within thirty (30) days of the effective date of this Final Order, Respondent shall pay a mitigated civil penalty of \$500.
2. Payment of the penalty shall be by cashier or certified check made payable to "Treasurer of the United States" and remitted to:

Regional Hearing Clerk
United States Environmental Protection Agency
Region VII
c/o Mellon Bank
P.O. Box 360748M
Pittsburgh, Pennsylvania 15251

The Respondent shall reference the Docket Number, RCRA-07-2002-0099, on the check. A copy of the check shall also be mailed to:

Kristina Kemp
Office of Regional Counsel
United States Environmental Protection Agency
Region VII
901 N. 5th Street
Kansas City, KS 66101

-
3. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

B. Compliance Actions

4. Respondent shall submit a Sampling & Analysis Plan to EPA within 60 days of receipt of this Final Order. Such plan shall be designed to determine whether hazardous waste has been

released into the environment at or near the point of generation and storage. The plan, at a minimum, must (1) describe the locations and number of samples to adequately determine if there has been a release of hazardous waste or hazardous constituents at or from the facility; (2) state that, at a minimum, two 0-6" soil samples and two 1.5'-2' soil samples be taken adjacent to the loading dock and all samples taken be analyzed according to EPA Test Methods SW-846, 8260, and 8270; (3) describe the sampling techniques to be used; (4) describe the sampling equipment, containers, and preservation methods to be used; (5) provide a scaled map showing the location the samples will be taken and all buildings and structures at the facility; (6) state the lab the samples will be shipped to for analysis; and (7) provide a schedule for implementation and reporting the results.

5. Respondent shall provide EPA with thirty (30) days written advance notice prior to conducting any field activities.

6. Upon receipt of EPA's approval of the Sampling and Analysis Plan, Respondent shall implement such plan in accordance with the schedule contained therein.

7. If any of the analytical results identified as a result of the work undertaken in paragraphs 4. and 6. above exceed the action levels posted on EPA Region IX's web site [www.epa.gov/region09/waste/sfund/prg/], then within thirty (30) days after receiving a notice from EPA that remediation actions must be taken at the facility, Respondent shall submit a Remediation Work Plan to EPA which details how Respondent will remediate the identified contamination. Such Remediation Work Plan shall be subject to EPA review and approval. Such Remediation Work Plan shall contain a schedule for implementation of the Remediation Work Plan and for the submission of a Remediation Report to EPA. The Remediation Report shall also be subject to EPA review and approval.

8. Upon receipt of EPA's approval of the Remediation Work Plan, Respondent shall implement such plan in accordance with the schedule contained therein.

9. Respondent shall submit all documents and other correspondence required to be submitted to EPA by this Final Order to:

Brian Mitchell
Air, RCRA and Toxics Division
U.S. Environmental Protection Agency
Region VII
901 North Fifth Street
Kansas City, Kansas 66101

10. EPA shall submit any notices or correspondence related to this Consent Agreement and Final Order to:

Mark Klausner
General Manager
Vessel Systems, Inc.
430 East 7th Street
Dubuque, IA 52001-0430

11. The EPA will review each submission of a plan or report by Respondent, and notify Respondent in writing of EPA's approval or disapproval of the plan or report, or any part thereof. If a submission is disapproved in whole or in part by EPA, EPA will provide written comments to Respondent explaining the basis for its decision. Within thirty (30) days of receipt of EPA's disapproval pertaining to any submission, Respondent shall amend/revise the disapproved submission, addressing all of EPA's comments, and resubmit same to EPA. If EPA disapproves the revised submission, EPA may modify and approve the same in accordance with its previous comments. In the event of such modification and approval, EPA will notify Respondent of the modification/approval.

C. Parties Bound

12. This Final Order shall apply to and be binding upon EPA and Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

D. Reservation of Rights

13. This Consent Agreement and Final Order addresses all administrative matters alleged in EPA's March 27, 2002 Complaint, Docket No. RCRA-07-2002-0099. EPA reserves the right to take any enforcement action with respect to any other violations of RCRA or any other applicable law.

14. Notwithstanding any other provision of this Consent Agreement and Final Order, EPA reserves the right to enforce the terms of the Final Order by initiating a judicial or administrative action under Section 3008 of RCRA, 42 U.S.C. § 6928, and to seek penalties against Respondent in an amount not to exceed twenty-seven thousand five hundred dollars (\$27,500) per day per violation pursuant to Section 3008(c) of RCRA, for each day of non-compliance with the terms of the Final Order, or to seek any other remedy allowed by law.

15. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and its implementing regulations and to enforce the terms and conditions of this Consent Agreement and Final Order.

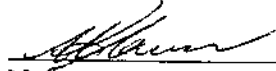
16. Except as expressly provided herein, including the provisions of Section D of this Consent Agreement and Final Order, nothing in this Consent Agreement and Final Order shall constitute or be construed as a release from any claim (civil or criminal), cause of action, or demand in law or equity by or against any person, firm, partnership, entity or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants or contaminants found at, taken to, or taken from Respondent's facility.

17. Notwithstanding any other provisions of the Consent Agreement and Final Order, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should EPA find that the future handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondent's facility may present an imminent and substantial endangerment to human health and the environment.

18. The headings in this Consent Agreement and Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement and Final Order.

19. The provisions of this Consent Agreement and Final Order shall be deemed satisfied upon a written determination by Complainant that Respondent has fully implemented the actions required in the Final Order to EPA's satisfaction.

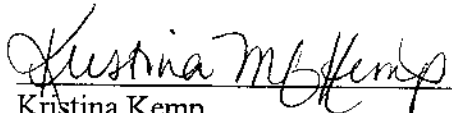
For the Respondent:


Name: _____
Printed Name *MARK KLAUSNER*
Title: *GENERAL MGR.*

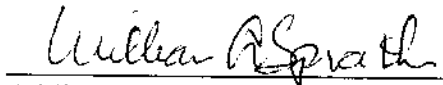
4/28/03
Date _____

For the Complainant:

The United States Environmental Protection Agency



Kristina Kemp
Associate Regional Counsel

4/30/03
Date _____


William A. Spratlin
Director
Air, RCRA and Toxics Division

5/1/03
Date _____

IT IS SO ORDERED. This Final Order is effective upon its final entry by the Regional
Judicial Officer.


Robert Patrick
Regional Judicial Officer

May 5, 2003
Date _____

IN THE MATTER OF Vessel Systems, Inc., Respondent
Docket No. RCRA-07-2002-0099

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Kristina Kemp
Assistant Regional Counsel

Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Ken Heitritter
Registered Agent for Vessel Systems, Inc.
430 E. 7th Street
Dubuque, Iowa 52001

Dated: 5/5/03


Kathy Robinson
Regional Hearing Clerk